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3 UNITED STATES DISTRICT COURT  
4 WESTERN DISTRICT OF WASHINGTON  
5 AT TACOMA

6 HARVEY JERRELS,

7 Plaintiff,

8 v.

9 DEPARTMENT OF CORRECTIONS,  
10 BELINDA STEWART, PAT GLEBE,  
11 CATHY M. BAUM, and CHARLES  
12 JONES,

13 Defendants.

No. C11-5712 BHS/KLS

ORDER DENYING MOTION FOR THE  
APPOINTMENT OF COUNSEL

14 Before the Court is Plaintiff's motion for the appointment of counsel. ECF No. 9.  
15 Having carefully reviewed Plaintiff's motion and balance of the record, the Court finds, for the  
16 reasons stated below, that Plaintiff's motion should be denied.

17 **DISCUSSION**

18 No constitutional right exists to appointed counsel in a § 1983 action. *Storseth v.*  
19 *Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). *See also United States v. \$292,888.04 in U.S.*  
20 *Currency*, 54 F.3d 564, 569 (9th Cir. 1995) (“[a]ppointment of counsel under this section is  
21 discretionary, not mandatory.”) However, in “exceptional circumstances,” a district court may  
22 appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1) (formerly 28  
23 U.S.C. § 1915(d)). *Rand v. Roland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *overruled on other*  
24 *grounds*, 154 F.3d 952 (9th Cir. 1998) (emphasis supplied.) To decide whether exceptional  
25 circumstances exist, the court must evaluate both “the likelihood of success on the merits [and]  
26 the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal

1 issues involved.” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (quoting  
2 *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). A plaintiff must plead facts that show he  
3 has an insufficient grasp of his case or the legal issue involved and an inadequate ability to  
4 articulate the factual basis of his claim. *Agyeman v. Corrections Corp. of America*, 390 F.3d  
5 1101, 1103 (9<sup>th</sup> Cir. 2004).

6 That a *pro se* litigant may be better served with the assistance of counsel is not the test.  
7 *Rand*, 113 F.3d at 1525. Moreover, the need for discovery does not necessarily qualify the issues  
8 involved as “complex.” *Wilborn*, 789 F.2d at 1331. Most actions require development of further  
9 facts during litigation. But, if all that was required to establish the complexity of the relevant  
10 issues was a demonstration of the need for development of further facts, then practically all cases  
11 would involve complex legal issues. *Id.*

12 Plaintiff filed his complaint *pro se* and has demonstrated an adequate ability to articulate  
13 his claims *pro se*. Plaintiff claims that Defendants failed to provide him with medical care in  
14 violation of the Eighth Amendment. ECF No. 1. This is not a complex case.

15 Plaintiff is requesting appointment of counsel because he is “mentally and physically  
16 disabled and unable to even attempt to comprehend, adequately articulate or understand the  
17 complexities of law.” Plaintiff states that he lacks training and an understanding in the law and  
18 his access to evidence, discovery and legal materials is limited. ECF No. 9. Plaintiff also claims  
19 that his reading, math, language, and battery skills are seventh grade or below and that he filed  
20 his civil complaint and all papers in this case with the help of jailhouse lawyers and clerks in the  
21 prison law library. *Id.* Plaintiff also claims that he has mental and physical issues dating back to  
22 1992 that have yet to be resolved or treated. Based on the information submitted by Plaintiff,  
23 however, the Court is unable to determine whether any such mental and/or physical issues hinder  
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1 Plaintiff's ability to adequately articulate his claims. The exhibits to the motion do not support  
2 any incompetency or disability that would limit the Plaintiffs' ability to represent himself. He  
3 has set forth his claims clearly in his complaint and there is nothing unusual or complex about  
4 Plaintiff's claims.

5 If Plaintiff needs additional time to prosecute this matter due to mental or physical  
6 constraints, he should provide the Court with documentation of such constraints so that the Court  
7 may make a determination as to any additional time and/or assistance that may be required in this  
8 case.  
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10 The Court finds no exceptional circumstances in this case. While Plaintiff may not have  
11 vast resources or legal training, he meets the threshold for a *pro se* litigant. Moreover, Plaintiff  
12 has not shown a likelihood of success on the merits.

13 Accordingly, Plaintiff's motion for the appointment of counsel (ECF No. 9) is **DENIED**.  
14 The Clerk is directed to send copies of this Order to Plaintiff.  
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17 **DATED** this 10th day of November, 2011.

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19 Karen L. Strombom  
20 United States Magistrate Judge  
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